

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
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Filed: April 03, 2017

Ms. Linda Dreeben
National Labor Relations Board
Appellate and Supreme Court Litigation Branch
1015 Half Street, S.E.
Washington, DC 20570

Re: Case No. 16-2771, *NLRB v. Thermico, Inc and Assoc Res*
Originating Case No. : 07-CA-170484

Dear Sir or Madam,

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Bryant L. Crutcher
Case Manager
Direct Dial No. 513-564-7013

Enclosure

Mr. Mark Thompson
President & CEO
Thermico, Inc. & Associated
Resources, Inc.
3405 Centennial Drive, Suite 2
Midland, MI 48642

Mandate to issue

No. 16-2771

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,)

Petitioner,)

v.)

THERMICO, INC. AND ASSOCIATE
RESOURCES, INC.,)

Respondent.)

J U D G M E N T

Before: COLE, Chief Judge; BOGGS and MOORE, Circuit Judges.

The National Labor Relations Board (“the Board”) applies for summary enforcement of its October 26, 2016 decision in Case No. 07-CA-170484 finding that Respondent Thermico, Inc. and Associate Resources, Inc. (“Thermico”) violated federal labor law. The Board also ordered Thermico to take certain remedial measures set forth in its order. Thermico has not responded to the application.

After the Local 47, International Association of Heat and Frost Insulators and Allied Workers (AWIU), AFL-CIO (“the Union”) filed a charge against Thermico, the parties entered into an informal bilateral settlement agreement approved by the Board’s Regional Director for Region 7. The agreement authorized the Regional Director to issue a complaint if Thermico failed to comply with its terms. After the Union asserted that Thermico was in breach of the settlement agreement, Region 7 warned Thermico of its noncompliance. The Regional Director filed a complaint based on Thermico’s breach of the settlement agreement’s terms, and the

No. 16-2771

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Board's General Counsel moved for default judgment. The proceeding was transferred to the Board, which ordered Thermico to show cause why a default judgment should not issue. Thermico did not respond, and the Board issued its decision and order granting the motion for default judgment and ordering Thermico to take certain remedial actions.

The Board now applies for summary enforcement of its October 26, 2016 decision, pursuant to 29 U.S.C. § 160(e). Section 160(e) provides that "[n]o objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances." Thermico's failure to file objections precludes this court from considering any objections to the Board's order absent extraordinary circumstances excusing Thermico's lack of objection. *NLRB v. Inkeepers of Ohio, Inc.*, 596 F.2d 177, 178 (6th Cir. 1979).

The application for summary enforcement is **GRANTED**. It is **ORDERED** and **ADJUDGED** that the Board's October 26, 2016 decision and order in Case No. 07-CA-170484 is hereby enforced. Thermico, its officers, agents, successors, and assigns shall abide by and perform the directions of the Board set forth in its order. (*See* Attached Order and Appendix).

The mandate shall issue forthwith.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

NATIONAL LABOR RELATIONS BOARD

v.

THERMICO, INC. AND ASSOCIATE RESOURCES, INC.

ORDER

Thermico, Inc. and Associate Resources, Inc., Midland, Michigan, a single employer, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Failing and refusing to bargain in good faith with Local 47, International Association of Heat and Frost Insulators and Allied Workers (AWIU), AFL–CIO as the exclusive collective-bargaining representative of employees in the bargaining unit.
 - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

All full-time and regular part-time mechanical insulation installers employed by the Respondent, at and out of its facility located at 3405 Centennial Drive, Suite 2, Midland, Michigan, but excluding scaffold builders, painters, office clerical employees, managerial employees, professional employees, technical employees, delivery drivers, and guards and supervisors as defined by the Act, and all other employees.
 - (b) Bargain in good faith with the Union not less than twice per week, at least 4 hours per session, or another schedule mutually agreed upon by the parties, until a complete collective-bargaining agreement or a bona fide impasse is reached.
 - (c) Within 14 days after service by the Region, post at its facility in Midland, Michigan, copies of the attached notice marked “Appendix.”

Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 5, 2015.

- (d) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Local 47, International Association of Heat and Frost Insulators and Allied Workers (AWUI), AFL–CIO as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time mechanical insulation installers employed by us, at and out of our facility located at 3405 Centennial Drive, Suite 2, Midland, Michigan, but excluding scaffold builders, painters, office clerical employees, managerial employees, professional employees, technical employees, delivery drivers, and guards and supervisors as defined by the Act, and all other employees.

WE WILL bargain in good faith with the Union not less than twice per week, at least 4 hours per session, or another schedule mutually agreed upon, until a complete collective-bargaining agreement or a bona fide impasse is reached.

THERMICO, INC. AND ASSOCIATE RESOURCES, INC.

The Board's decision can be found at www.nlrb.gov/case/07-CA-170484 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive

Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

